

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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March 5, 1984

Steven Woodside
Chief Assistant
Office of the County Counsel
County Government Center, East Wing
70 West Hedding Street
San Jose, CA 95110

Re: Your Request for Advice, Our
Advice No. A-84-020

Dear Steve:

Thank you for your request for advice on behalf of Mr. Felix Castellanos who has been proposed for appointment to the Santa Clara County Assessment Appeals Board. Your questions concern the conflict of interest provisions of the Political Reform Act.

FACTS

The Assessment Appeals Board decides appeals from property owners who are challenging the County's valuation of their property for property tax purposes. In some instances, the property owners present the Board with independent appraisals. Mr. Castellanos is a private appraiser who performs work for a variety of clients. One of his clients is the Santa Clara County Transportation Agency, which pays him approximately \$5,000 per year. His appraisals are used by the Agency for property acquisition, and they are not subject to review by the Assessment Appeals Board.

QUESTIONS PRESENTED

1. Do the conflict of interest provisions of the Political Reform Act prevent Mr. Castellanos from serving on the Assessment Appeals Board?
2. How do the provisions of the Act affect the application of the common law conflict of interest provisions?

DISCUSSION: QUESTION #1

The Political Reform Act will not prevent Mr. Castellanos from being appointed to the Assessment Appeals Board. However, it may affect his decisionmaking and some of his activities on the Board. Government Code Section 87100^{1/} prohibits a local government official from making, participating in the making, or in any way attempting to use his official position to influence, a decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect,^{2/} distinguishable from its effect on the public generally,^{3/} on:

(a) Any business entity in which the public official has a direct ... investment interest worth more than \$1,000.

* * *

(c) Any source of income ... aggregating \$250 or more in value provided to, received by, or promised to, the public official within 12 months prior to the time when the decision is made....

Mr. Castellanos has an investment interest in, and is 100% owner of, his private appraisal practice. The business is also a source of income to him, as are those clients of his business who promised or paid him \$250 or more in fees.^{4/} Thus, the

^{1/} Hereinafter all statutory references made are to the Government Code unless otherwise indicated.

^{2/} See the enclosed copy of 2 Cal. Adm. Code Section 18702 which defines the phrase "material financial effect."

^{3/} See the enclosed copy of 2 Cal. Adm. Code Section 18703 which explains the "public generally" exception.

^{4/} Section 82030(a) provides that income of an official includes a pro rata share of any income of a business entity in which the official owns a 10% or greater interest.

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County is a source of income to Mr. Castellanos because it pays his business approximately \$5,000 per year.^{5/}

If Mr. Castellanos is appointed to the Assessment Appeals Board, he must disqualify himself as follows:

Decisions affecting Mr. Castellanos' appraisal business:

Mr. Castellanos must disqualify himself from a decision if it is reasonably foreseeable that the decision will materially affect his business. It is unlikely that he will be confronted with such decisions.

Decisions affecting clients other than the County:

If, as a member of the Assessment Appeals Board, Mr. Castellanos is confronted with a decision that will foreseeably have a material financial effect on a client who promised or paid him \$250 or more in fees during the 12 months prior to the decision, he must disqualify himself from making or participating in the decision. He is also prohibited from "in any way attempting to use his official position to influence the decision." This phrase has been interpreted to prohibit Mr. Castellanos from, among other things, preparing an independent appraisal for a client if the appraisal is to be used before the Board in challenging the County's valuation of the client's property. (See the enclosed copies of the Thacher (A-83-226) and Harron (A-83-184) advice letters, and 2 Cal. Adm. Code Section 18700(e).)

Decisions affecting the County:

The County of Santa Clara is a source of income to Mr. Castellanos. However, he will not be disqualified on decisions materially affecting the County because of the "public generally" exception to disqualification in the Act.^{6/} This exception allows a public official who would otherwise be disqualified to participate in a decision if the decision's

^{5/} The money the County pays Mr. Castellanos is not salary and, therefore, the exception provided in Section 82030(b)(1) is not applicable.

^{6/} Although disqualification is not required, Mr. Castellanos must disclose the County as a source of income if it is required by his disclosure category.

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effect on the official's interest is the same as the effect on the public generally. (Section 87103 and 2 Cal. Adm. Code Section 18703, copy enclosed.) Mr. Castellanos is free to participate in decisions affecting the County because the County is comprised of the public generally.^{7/}

DISCUSSION: QUESTION #2

In your letter, you asked how the existence of the Political Reform Act affects the application of the common law rules on conflict of interests. In California, the common law is inapplicable when it is modified by state statute. (C.C.P. Section 22.2, Lowman v. Stafford (1964) 226 Cal. App. 2d 31.) However, the common law continues to be applicable where state law is silent. (Estate of Elizalde (1920) 182 Cal. 427.) Thus, the common law is superseded to the extent that the Political Reform Act, or any other statutory provisions, apply.

If you have any additional questions, please feel free to contact me at 916/322-5901.

Very truly yours,

Janis

Janis Shank McLean
Counsel
Legal Division

JSM:km
Enclosures

^{7/} As stated above, the appraisals that Mr. Castellanos prepares for the County are never reviewed by the Board.

County of Santa Clara
California

Office of the County Counsel
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
299-2111 Area Code 408

Donald L. Clark, County Counsel

January 30, 1984

Ms. Barbara Milman,
Chief, Legal Division
Fair Political Practice Commission
Post Office Box 807
Sacramento, CA 95804

Re: Request for and Confirmation of Legal
Advice on Potential Conflict of Interest
Involving an Appointment to the Santa
Clara County Assessment Appeals Board

Dear Ms. Milman:

This letter follows telephone conversations with Diane Fishburn and Janis McLean of your staff concerning a potential conflict of interest involving a proposed appointment to the Santa Clara County Assessment Appeals Board. We request that the advice given to us by your office be confirmed as soon as possible.

Briefly, the facts are as follows: An individual is being considered for appointment to the Santa Clara County Assessment Appeals Board. The duties and responsibilities of the Assessment Appeals Board are generally set forth in Revenue and Taxation Code sections 1600 et seq. (see especially §§ 1624 and 1624.1), and include making decisions on the assessed valuation of property within the County of Santa Clara, which valuations form the basis for property taxes payable to the County of Santa Clara.

The individual who may be appointed to the Assessment Appeals Board is a licensed appraiser who conducts appraisals for a wide variety of clients. One of his clients is the Santa Clara County Transportation Agency which provides approximately \$5,000.00 per year in appraisal business to this individual. The appraisals which the individual performs for the Transportation Agency are not subject to review or any action by the Assessment Appeals Board. Rather, these appraisals are used by the Transportation Agency primarily for purposes of property acquisition.

Is there a conflict of interest which would prevent the individual from serving on the Assessment Appeals Board?

Ms. Fishburn and Ms. McLean have orally advised us as follows:

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The income which the individual derives from the Transportation Agency is a "source of income" within the meaning of Government Code § 87103 and must be reported."

Income derived from the County Transportation Agency is not exempt as a "salary" received from a local agency as provided in Government Code section 82030 (b)(2).

Notwithstanding the fact that decisions of the Assessment Appeals Board will affect directly one of the individual's sources of income (the County), he will not be required to disqualify himself from decisions affecting the County because the County is considered to be synonymous with the public generally. The "public generally" exception of Government Code section 87100 will apply. In short, his decisions will not "have a material financial effect, distinguishable from its effect on the public generally," on his source of income.

This advice concerning the "public generally" exception has been recently confirmed in your Advice Letter No. A-83-264 to Mr. Gordon Hart from Ms. Janis McLean, January 6, 1984.

We intend to rely upon your advice that there is no disqualifying conflict of interest within the meaning of the Political Reform Act. We are concerned, however, that under principles of common law, there may be a conflict of interest. However, because the Political Reform Act so specifically deals with this source of income problem, we are prepared to advise our clients that the Political Reform Act occupies the field of law applicable to this situation, and thus the common law does not apply. See 59 Opinions of the Attorney General 604, at p. 614. Do you agree?

We very much appreciate the advice which you have already given to us; and we look forward to your written reply to this letter.

Very truly yours,

DONALD L. CLARK
County Counsel

By *Steven Woodside*
STEVEN WOODSIDE
Chief Assistant

SW:bc
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